amounts of $143,763.12 and $106,797.45, for the years 1962 and 1963, respectively.

5. The facts upon which the petitioner relies as the basis of this case are as follows:

(a) Petitioner is a public utility engaged in the business of production, transmission, distribution and sale of electrical energy. Petitioner employs the accrual method of accounting and its taxable year coincides with the calendar year.

(b) Petitioner for each of the years here involved owned mobile transportation and power operated equipment and communications equipment and deducted in its tax returns as filed depreciation in respect of such equipment.

(c) The mobile transportation and power operated equipment owned by petitioner during the years 1962 and 1963 included passenger cars, pickup trucks, light trucks, medium trucks, heavy trucks, cranes, tractors, pole diggers and similar equipment. This equipment was used in connection with operational, maintenance and construction activities. This equipment was depreciated by petitioner under the declining balance method of depreciation.

(d) The communications equipment here involved is radios for general use in connection with operational, maintenance and construction activities. A portion of such equipment has been depreciated under the straight line method. The remainder has been depreciated under the declining balance method.

(e) The petitioners, during the years 1962 and 1963 in the ordinary course of its business, constructed properties for use by it in its business. Such construction has been undertaken either with petitioner's own employee personnel or by construction contracts performed by others. Petitioner's mobile transportation and power operated equipment and communications equipment have been used in part in the construction work carried out by its employees.

(f) The Commissioner disallowed and capitalized the deductions for depreciation on petitioner's mobile trans-

portation and power operated equipment and communications equipment to the extent that the Commissioner determined that such equipment was used in the construction of capital assets. The Commissioner then allowed a deduction on the amounts so capitalized over the useful life of the properties constructed. The adjustments made by the Commissioner are as follows:

Year	Depreciation Disallowed and Capitalized	Depreciation Allowed on Depreciation Capitalized	Net Depreciation Adjustment
1962	$143,763.12	$3,333.37	$140,429.75
1963	$106,797.45	$9,985.50	$ 96,811.95

(g) The depreciation deductions applicable to the mobile transportation and power operated equipment and communications equipment owned by petitioner were claimed by and are properly allowable to petitioner as deductions in its corporation income tax returns filed for the respective years, under the authority of the provisions of section 167 of the Internal Revenue Code of 1954. The Commissioner has erroneously disallowed a part of said deduction.

WHEREFORE, the petitioner prays that this Court may try the case and determine that no deficiencies are due from the petitioner for the years here involved, and in addition grant the petitioner any and all further relief that it may be entitled to in the premises including any refunds, together with interest thereon as allowed by law, to which petitioner may be entitled upon decision of this case.

/s/ Norton Kern
NORTON KERN

/s/ Lawrence C. Wilson
LAWRENCE C. WILSON
Office and P. O. Address
Reid & Priest
Two Rector Street
New York, New York 10006

STATE OF IDAHO)
) ss.:
COUNTY OF ADA)

M. M. Ilch, being duly sworn, says that he is Treasurer of Idaho Power Company, above-named, and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true.

/s/ M. M. Ilch
Treasurer

Subscribed and sworn to before me this 2 day of August, 1967

/s/ J. Lewis

Notary Public in and for the State of Idaho, residing at Boise, Idaho. My Commission expires October 7, 1969.

[Exhibits Omitted in Printing]

TAX COURT OF THE UNITED STATES

Docket No. 4012-67

IDAHO POWER COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ANSWER

THE RESPONDENT, in answer to the petition filed in above-entitled case, admits and denies as follows:

1, 2 and 3. Admits the allegations in paragraphs 1, 2 and 3 of the petition.

4. (a) Denies that respondent erred as alleged in paragraph 4(a) of the petition.

5. (a), (b), (c) and (d). Admits the allegations in paragraph 5(a), (b), (c) and (d) of the petition.

(e) Admits the allegations in paragraph 5(e) of the petition, except that it is denied that the construction of the properties by the petitioner was undertaken in the ordinary course of its business.

(f) Admits the allegations in paragraph 5(f) of the petition.

(g) Denies the allegation in paragraph 5(g) of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.

/s/ Lester R. Uretz, JDP
LESTER R. URETZ
Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MELVIN L. SEARS,
Regional Counsel,

JOHN D. PICCO,
Staff Assistant to
Regional Counsel,
Internal Revenue Service,
1101 Sixth & Lenora Building,
Seattle, Washington 98121.

TAX COURT OF THE UNITED STATES

Docket No. 4012-67

[Filed April 1, 1969]

IDAHO POWER COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto by their respective counsels that the facts hereinafter stated shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce upon the trial of this action any other or further evidence not inconsistent with the facts herein stipulated and further reserving to either party the right to object to any fact herein stipulated on the ground that such fact is irrelevant or immaterial.

(1) The petitioner was incorporated under the laws of the State of Maine on May 6, 1915. Petitioner is a public utility engaged in the production, transmission, distribution and sale of electric energy with its principal place of business at the time of filing the petition with the Court located in Boise, Idaho.

(2) At all times material herein the petitioner maintained its books of account and filed its federal income tax returns on the calendar year basis.

(3) At all times material herein the petitioner employed the accrual method of accounting with respect to its books of account and in the filing of its federal income tax returns.

(4) By statutory notice of deficiency mailed to the petitioner on May 19, 1967 the respondent determined deficiencies in the petitioner's income tax for the years 1962 and 1963 in the amounts of $73,023.47 and $50,342.21, respectively.

(5) The petitioner claimed in its tax returns as filed or adjusted total depreciation deductions for the years 1962 and 1963 in the amounts of $9,379,380.47 and $11,354,885.50, respectively.

(6) During each of the years 1962 and 1963 the petitioner owned automotive transportation equipment used in its business. Communication equipment, such as radios, was affixed to the transportation equipment and used in the operation of such transportation equipment. Petitioner used such transportation equipment in part for operation and maintenance and in part for the construction of additional operating properties having a useful life of more than one year. In its books of account the petitioner charged the depreciation on the transportation equipment to the extent used in construction to the capital assets so constructed either directly or through clearing accounts in accordance with accounting procedures by the Federal Power Commission which have been adopted by the Idaho Public Utilities Commission; see Exhibit 1-A. The depreciation so capitalized on petitioner's books of account for the years 1962 and 1963 amounted to $150,047.42 and $130,523.99, respectively.

(7) In computing depreciation for tax purposes the petitioner deducted depreciation on all transportation equipment including depreciation on transportation equipment used in construction. Such equipment was depreciated over a composite life of 10 years. Petitioner depreciated all of its automotive transportation equipment whether or not used in construction under the straight line and declining balance methods of depreciation.

(8) The petitioner deducted depreciation for tax purposes with respect to the transportation equipment owned by it including depreciation on such equipment used in construction for the years 1962 and 1963 in the aggregate amounts of $297,276.92 and $309,288.89, respectively, computed as follows:

	Under the straight line method	Under the declining balance method	Total
1962			
Transportation equipment:			
a. a/c 392—transportation		$239,230.97	$239,230.97
b. a/c 396—power operated		41,529.69	41,529.69
c. a/c 397—radios	$5,836.89	10,679.37	16,516.26
	$5,836.89	$291,440.03	$297,276.92
1963			
Transportation equipment:			
a. a/c 392—transportation		$241,984.19	$241,984.19
b. a/c 396—power operated		26,871.56	26,871.56
c. a/c 397—radios	$13,728.93	26,704.21	40,433.14
	$13,728.93	$295,559.96	$309,288.89

(9) For the years 1962 and 1963 the Commissioner of Internal Revenue disallowed and capitalized the deduction for depreciation on taxpayer's transportation equipment to the extent that such equipment was used in the construction of capital assets and allowed a deduction for depreciation on the amounts so capitalized over the useful life of the property constructed. The property so constructed was primarily transmission and distribution facilities with a useful life of 30 years or longer. The adjustments made by the Commissioner are as follows:

Depreciation on transportation equipment disallowed and capitalized:

Description	Depreciation claimed on return	Per cent to be capitalized	Amount to be capitalized
1962			
Straight line:			
a. a/c 397—radios	$ 5,836.89	48.36%	$ 2,822.72
			$ 2,822.72
Declining balance:			
a. a/c 392—transportation	239,280.97	48.36%	115,692.10
b. a/c 396—power operated	41,529.69	48.36%	20,083.76
c. a/c 397—radios	10,679.37	48.36%	5,164.54
			140,940.40
			$143,763.12
1963			
Straight line:			
a. a/c 397—radios	$ 13,728.93	34.53%	$ 4,740.60
			$ 4,740.60
Declining Balance:			
a. a/c 392—transportation	241,984.19	34.53%	83,557.14
b. a/c 396—power operated	26,871.56	34.53%	9,278.75
c. a/c 397—radios	26,704.21	34.53%	9,220.96
			102,056.85
			$106,797.45

Less depreciation allowable on depreciation capitalized:

	1962 Additions 1962	1962 Additions 1963	1963 Additions
Sum of year-digits properties:			
Average balance of depreciation capitalized during year less average balance of retirements	$ 977.75	$ 1,941.42	$ 540.78
Composite depreciation rate allowable	2.7077%	3.6349%	3.6349%
Depreciation deduction allowable on capitalized depreciation	$ 26.48	$ 70.57	$ 19.66
Declining balance properties:			
Average balance of depreciation capitalized during year less average balance of retirements	$68,454.39	$134,899.26	$51,694.80
Composite depreciation rate allowable	4.8308%	5.3031%	5.3031%
Depreciation deduction allowable on capitalized depreciation	$ 3,306.89	$ 7,153.84	$ 2,741.43

Summary

Taxable year	Total depreciation on transportation equipment disallowed and capitalized	Depreciation allowed on depreciation capitalized	Net amount disallowed
1962	$143,763.12	$ 3,333.37	$140,429.75
1963	106,797.45	9,985.50	96,811.95

(10) If it is determined that the depreciation sustained on the transportation equipment owned by petitioner to the extent used in the construction of capital assets is not an allowable deduction as such but should be capitalized and deductions for depreciation recovered over the useful life of the assets constructed as herein

maintained by respondent then it is stipulated that the adjustments made by the Commissioner as set forth in paragraph (9) of this stipulation of facts are correct. If, however, it is determined that depreciation on transportation equipment used in the construction of capital assets should not have been capitalized for tax purposes then it is stipulated that respondent's adjustments with respect thereto as set forth in the statutory notice of deficiency and paragraph (9) of this stipulation of facts should be reversed.

(11) The petitioner engages in the construction of additions to its property. Such construction work has been carried on either with petitioner's own employee personnel or through construction contracts performed by others on behalf of petitioner or by a combination of both. The approximate gross amounts of property constructed by the petitioner and by others as added each year to petitioner's property account for the years 1961 through 1963 are as follows:

Year	Gross Additions	Amount Constructed by Petitioner	Amount Constructed by Others Under Contract	Purchased Equipment
1961	$65,407,029.28	$14,609,896.38	$41,262,380.48	$ 9,534,752.42
1962	8,235,640.22	7,139,940.72	314,790.45	780,709.05
1963	5,988,139.56	5,642,342.79	115,792.63	230,004.14

For more than twenty years, petitioner has constructed additions to its properties by its own employees and by others under contract with petitioner. The additions so constructed were primarily transmission and distribution facilities.

(12) The types of automotive transportation equipment owned by the petitioner during the years 1962 and 1963 included passenger cars, pickup trucks, light trucks, medium trucks, heavy trucks, power operated equipment and trailers.

(13) The usage of the respective classes of petitioner's automotive transportation equipment during the years 1962 and 1963 and up to the present time is as follows:

Passenger cars:

Petitioner owns and operates a fleet of passenger cars ranging from large passenger cars to compacts. They are used to transport petitioner's personnel in the performance of their duties with respect to operation, maintenance and construction. The operating expenses for those vehicles used by management, certain supervisors, the sales department and in customer accounting and collections are all charged to operating expenses. The operating expenses for those vehicles used by superintendents, certain supervisors, engineers and their assistants are charged to the various functional activities in proportion to the miles operated for each purpose. Construction superintendents and engineers engaged entirely in construction charge the automobile operating expense to each project according to the number of miles the vehicle was operated for construction only.

Pickup trucks:

Petitioner owns and operates a fleet of trucks of less than one ton capacity that are used to transport employees engaged in various operational, maintenance and construction activities and to transport limited amounts of materials utilized in those same functions. They also serve as mobile tool boxes and work bases. Some pickups have no special equipment or special bodies and some are equipped with accessories and special bodies for use in specialized activities such as appliance servicing, meter maintenance and communication equipment operation and maintenance. The operating expenses for these trucks are charged to operation, maintenance and construction on the basis of miles operated for each purpose.

Light trucks:

Trucks of from one to two tons capacity are included in this group. They consist of four wheel drive power wagons, small line trucks, one ton pickups and flat beds. They are used largely in opera-

tion, maintenance and construction activities. The cost of their operation is charged to the various functions on the basis of hours used. Those trucks in this group classed as line trucks have special bodies and equipment.

Medium and heavy trucks:

The equipment in this group consists of all trucks 2½ tons and over, buses and traction units used to pull large trailers. There are large line trucks that are equipped with line bodies, winches and special hydraulic equipment for line construction, trucks with special tanks for transporting fish, trucks with hydraulic hoists for raising workmen to the line level, trucks with beds and hoists used for loading and transporting material, and trucks built as traction units for pulling large trailers. The operating expenses on these units are charged on the basis of hours of use. They are used in maintenance and construction. Any of these units can be and are used for any of these purposes.

Power operated equipment and trailers:

Power operated equipment covers such items as cranes, tractors, road graders, hole diggers, backhoes, air compressors and conductor tensioning equipment. Trailers range from two wheel pole trailers to multiwheel low bed trailers of 65 ton capacity which are pulled by special traction units. As in the case of trucks the units included in this category have their costs charged to the different functions on the basis of hours used. Also similar to trucks, all of these units are used in maintenance and construction activities.

(14) To the extent used in construction, all costs of operating and maintaining transportation equipment except pension contributions, social security taxes, motor vehicle taxes and depreciation were capitalized by petitioner for tax purposes. The Commissioner's position is that depreciation on all transportation equipment used in construction should be capitalized. The petitioner's

position is that such depreciation is currently deductible. There is no controversy as to the current deduction of pension contributions, social security taxes and motor vehicle taxes.

(15) The costs of construction as prescribed by the Federal Power Commission are listed and described in sections 3 and 4 on pages 8 through 10 of the Federal Power Commission Uniform System of Accounts for Public Utilities and Licenses (which includes Idaho Power Company) as applicable to the years 1962 and 1963, herein attached as Exhibit 1-A. The allocation to capital cost of depreciation on transportation equipment used in construction is set forth in account 403 on page 63 of Exhibit 1-A.

(16) Attached hereto as Exhibits 2-B, 3-C and 4-D are copies of petitioner's tax return for 1962, petitioner's amended return for 1962 and petitioner's tax return for 1963, respectively.

Dated: March 31, 1969

/s/ Norton Kern
NORTON KERN
Counsel for Petitioner

/s/ Richard M. Hahn, JDP
RICHARD M. HAHN
Acting Chief Counsel
Internal Revenue Service

[Exhibits Omitted in Printing]

Docket No. 4012-67

IDAHO POWER COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

United States District Courtroom,
United States Courthouse
Portland, Oregon,

Tuesday, April 1, 1969.

Met, pursuant to notice, at 11:50 o'clock a.m.

BEFORE:

HONORABLE IRENE F. SCOTT, Judge.

APPEARANCES:

F. NORTON KERN, of the firm of Reid & Priest, Two Rector Street, New York, New York 10006. appearing on behalf of Petitioner.

JOHN D. PICCO, 820 Multnomah Building, Portland, Oregon 97204, appearing on behalf of Respondent.

• • • •

[18] JAMES F. SERVIS

was called as a witness on behalf of Petitioner and, having been first duly sworn, testified as follows:

THE CLERK: For the record, may we have your name.

THE WITNESS: James F. Servis, S-e-r-v-i-s.

THE CLERK: And your address, please.

THE WITNESS: It is 2810 Clark Street, Boise, Idaho, 83705.

DIRECT EXAMINATION

BY MR. KERN:

Q. By whom are you employed, Mr. Servis?

A. Idaho Power Company.

[19] Q. What is your position with Idaho Power Company?

A. I am now superintendent of engineering and construction.

Q. How long have you been employed by Idaho Power Company?

A. Thirty-five and a half years.

Q. Would you be kind enough to give us a brief resumé of the positions that you held with Idaho Power Company and the kinds of work you did in each position?

A. While I was going to college, I worked on construction crews during the summer and, after graduation, I worked on a construction job in the State of Nevada. I went from there—

Q. (Interrupting) May I interrupt. What year did you first go to work for Idaho Power Company while you were going to school?

A. In 1929.

Q. You continued in school for how long?

A. I graduated in '33.

Q. Please proceed.

A. In the fall of '33, I worked on the transmission line, going from there into power plant work for two years, thence into the drafting department, general office in Boise, for a year, moving into the engineering department and working from there into supervisor of mobile construction crews, mobile line, [20] that is, and until 1961, at which time I was made superintendent of construction and, as of last September, was made superintendent of engineering and construction.

Q. In what year were you first placed in charge of construction for the Idaho Power Company?

A. In 1944.

Q. Are you a registered engineer?

A. I am.

Q. In what states?

A. Idaho and Oregon.

Q. In your present position, are you in charge of the construction activities of Idaho Power Company?

A. I am in charge of all the construction with the exception of power plant construction.

Q. Does Idaho Power Company use its own men and employees to construct facilities?

A. We do.

Q. For how long has Idaho Power Company constructed its own facilities?

A. Well, during the summer vacations in 1929, I worked on a construction crew building distribution lines at that time. As far as I know, we had construction crews in Idaho Power Company since it was formed in 1916.

Q. Since you were placed in charge of construction in 1944, has Idaho Power Company constructed its own facilities [21] in each of those years?

A. Yes, we have.

Q. What kinds of facilities does Idaho Power Company construct for itself?

A. Transmission lines, transmission switching stations, distribution lines, distribution stations, and connected facilities such as roads, timber turning and so forth.

Q. Has Idaho Power Company constructed facilities of this type for itself in each of the years since you have been in charge of construction?

A. We have.

Q. Is Idaho Power Company still constructing facilities of this type for itself?

A. We do.

Q. Approximately how many men do you have or have you had engaged in the construction facilities for Idaho Power Company over the years?

A. The present time we have 140 employees who are working on construction. We have had as high as 300 heavy construction years.

Q. How few would you say that you have had involved?

A. I would say, at the present time, we are as low as we have been for a number of years.

Q. For what reason or reasons does Idaho Power Company construct its own facilities?

[22] A. We feel that we actually get a better constructed facility with our own force, at a lesser cost than going outside. When we got into this business in our area, at least, these contractors weren't available. I am going back to 1944, during World War II.

Q. Are contractors available at the present time?

A. Much more readily now.

Q. But you still continue to construct?

A. We still do a lot of our own work.

Q. How many miles of transmission line does Idaho Power Company have?

A. At the present time, we have over 4,000 miles of transmission line.

Q. How many miles of transmission, or of distribution facilities?

A. Better than 14,000.

Q. Could you state for us approximately what proportion of these facilities you believe that Idaho Power Company has constructed for itself?

A. I would say at least 75 per cent.

Q. Does Idaho Power Company use mobile transportation equipment in constructing its—

A. (Interrupting) We do.

Q. What types of equipment do you use?

A. Dispatching of cars, pickups, light trucks, heavy [23] trucks, power-operated equipment, trailers—

Q. (Interrupting) Is this equipment used for purposes other than construction of Idaho Power's own facilities?

A. At times.

Q. For what other purposes is it used?

A. It is used in emergencies, maintenance, repair work, storm damage, the moving of heavy transformers from a substation into the repair shop in Boise.

Q. Is it used for operations?

A. It is used for operations very seldom, that is, the mobile equipment.

Q. Are the automobiles used for operations?

A. Yes.

Q. The truck occasionally, are the trucks used for operations?

A. Your heavy trucks normally not. Your pickups would be out on operations on divisional work, not on the heavy construction.

Q. Is this equipment also used for maintenance?

A. Yes.

Q. Do you anticipate that Idaho Power Company will continue to construct its own facilities in the future?

A. I do.

Q. Will the types of facilities so constructed continue to be in the nature of transmission and distribution facili- [24] ties?

A. I would say that we would carry on about like we are at the present time, with the exception of going to extra high transmission lines where we get into 500 kv. The equipment there is considerably larger than we have at the present time and whether we would carry into that is not probable right now.

Q. As to distribution facilities, do you believe you will continue—

A. (Interrupting) We will continue that. And our transmission substations and distribution service stations we have constructed ever since I have been with the company, 100 per cent.

MR. KERN: I have no further questions.

Your Honor, Mr. Picco has just asked me if he may go beyond the scope of direct examination in his cross-examination. Well, I have no real knowledge as to the extent of his cross-examination. In general, I have no objection to his going beyond the scope. If something comes up, I will reserve and would like to object at that time.

THE COURT: And The Court will rule on it when it comes up.

This is the normal recess time. If you think it will be 15 minutes, we could go on and then recess until 2:30.

MR. PICCO: If Your Honor please, I think in 15 [25] minutes we may be done.

THE COURT: That is what I thought, and it would

save Mr. Kern and his witness from having to return, so we will do that, then.

MR. PICCO: Yes.

CROSS-EXAMINATION

BY MR. PICCO:

Q. Mr. Servis, part of the construction is being performed by others under contract, isn't that true?

A. Partly.

Q. Does the petitioner, Idaho Power, construct the additions and improvements for itself or for its use only?

A. That is right.

Q. It doesn't construct the additions and improvements for sale to the public, does it?

A. No.

Q. Nor does it advertise or hold itself out as such?

A. No, we do not.

Q. Would it be fair to conclude that by reason of a substantial construction program involving its own employees which you have testified to this morning, that petitioner is required to purchase more transportation equipment than would have been needed simply for utility purposes or for maintenance purposes?

A. As I mentioned, back in '44 we got into construc-
[26] tion. There weren't contractors available and we did have to purchase additional equipment to do this construction, more than you would as an operating company.

Q. I notice in the taxable years 1962 and '63, that the amounts constructed by others under contract diminished quite a bit.

A. This is right.

Q. In view of that, would you say that you have to think in terms of buying more transportation equipment for construction purposes than for only utility purposes or maintenance work?

A. A lot of this equipment that was used and is still being used was available even as of now. However, in later years, as we got into tension equipment and pulling equipment as they are now using in construction, this equipment had to be purchased.

Q. And it was being purchased for the purpose of construction, was it not?

A. Not at all. In other words, you have to maintain the property after it is built and if you have a contractor, an outside contractor come in and build these facilities, he leaves when the job is finished and you have to have some way of connecting this tower, some way of restringing the conductor that is torn out by this, because your contractor isn't there. In our area, we are not as fortunate as they are in other locations where contractors are available.

[27] Q. I don't know that you are getting my question. You are buying this transportation equipment for use in construction, for use in constructing your own projects?

A. This is right.

Q. Now, could the petitioner have done with less transportation equipment if its construction projects had been performed entirely by outsiders?

A. I would say that would be true.

Q. Would you say that by reason of the nature of some of the construction, that some of the transportation equipment purchased was primarily for construction purposes?

A. That and maintenance of the constructed facilities.

Q. Take the large equipment, the very large equipment like the shovels and like that, wouldn't that have been purchased for the purposes of construction only?

A. I presume you could refer to that as a large crane, for instance. Is this what you are referring to?

Q. Yes.

A. We would have to have that for maintenance and we are using that every day in maintenance work and in our transportation and distribution substations.

Q. So I imagine—

A. (Interrupting) It is used both.

Q. It is used for both.

And you don't know of any equipment that was purchas- [28] ed that, because of its nature, is suitable primarily for construction purposes only?

A. I believe we use our equipment both in construction and maintenance.

Q. I understand that, from Mr. Kern, that you have read the stipulation of facts in this case.

A. I have, yes.

Q. Now, the parties have stipulated in paragraph 14, the extent of the stipulation, that the extended use in constructional costs of operating and maintaining transportation equipment, except for pension contributions, Social Security taxes, motor vehicle taxes and depreciation were capitalized by the petitioner for tax purposes.

A. I am afraid I can't answer that.

Q. There is no answer. I am just saying we have stipulated that. Would you please describe some of the costs involved in operating and maintaining transportation equipment used in the construction?

A. Well, there is fuel, tires, repairs. This covers the largest items.

Q. How about the wages and salaries of employees?

A. That is not a part of the equipment charged in our jobs. What I mean, that it goes in as man-hour cost.

Q. Wages of employees who operate the equipment?

A. That is man-hour costs. It isn't charged with the [29] equipment.

Q. But do you know whether it is charged to the construction? It is, is it not?

A. It is charged to the job, but not as a contractor would on a piece of operating equipment.

Q. So, then how about costs of transporting the employees and materials and supplies and tools to and from the points of construction?

A. We do that.

Q. That is charged to the job, isn't it, construction?

A. Right.

Q. One other question. How about overhead expenses, like general superintendent?

A. That is, on a project job, it is charged directly to the job. On a smaller job or a nonproject job, it is cleared through the clearing accountant.

MR. PICCO: That is all.

THE COURT: Do you have anything further, Mr. Kern?

MR. KERN: No, I have not, Your Honor.

THE COURT: Thank you, Mr. Servis. You are excused.

(Witness excused.)

THE COURT: Do you have any other evidence to present?

MR. KERN: No, I do not, Your Honor. The stipulation and the witness is all we had.

THE COURT: Then you rest?

[30] MR. KERN: Yes, Your Honor.

THE COURT: Do you have anything?

MR. PICCO: We rest, too, Your Honor.

* * * *

TAX COURT OF THE UNITED STATES
WASHINGTON

[SEAL]

Docket No. 4012-67

IDAHO POWER COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed April 13, 1970, it is

ORDERED AND DECIDED: That there are deficiencies in income taxes due from the petitioner for the taxable years 1962 and 1963 in the amounts of $73,023.47 and $50,342.21, respectively.

Entered Apr. 23, 1970.

/s/ Irene F. Scott
Judge.

SUPREME COURT OF THE UNITED STATES

No. 73-263

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

IDAHO POWER COMPANY

ORDER ALLOWING CERTIORARI. Filed November 5, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1973 527222 131